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LETTER TRANSFERRING MEMORANDUM OUTLINING EARLY TRANSFERAL ISSUES
DISCUSSED BETWEEN NAVFAC MIDLANT AND STATE OF TENNESSEE MILLINGTON
SUPPACT TN
12/18/1998
STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION



STATE OF TENNESSEE
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December 18, 1998

The Honorable George R. Harvell, Jr.
Mayor, City of Millington
7930 Nelson
P.O. Box 247
Millington, TN 38083-0247

RE: Early Transfer

Dear George:

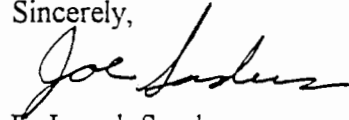
I was glad that we had a chance to discuss the early transfer at the meeting last Friday. I believe that it was helpful to have all of the interested persons present so that everyone had a better understanding of all the issues involved. The State's concern has been, and continues to be that Millington receive everything that it needs in order to make the airport a viable project. You made it clear that while Millington is not happy with all of the details of the transfer, Millington is now willing to accept the Navy's proposal. Based on that understanding, the State will proceed with processing the proposed early transfer request. As we indicated at the meeting, the State will, of course, insist that it not give up its natural resource claims. It appeared from the statements made by Mr. Beverly that it will be several months before the Navy will be in a position to submit a final draft of the deferral request to the Governor. We are committed to work with the Navy to resolve the issues raised in comments on the current draft.

Enclosed is a memorandum which outlines what was discussed at the meeting in more detail. Please review this memo, and let me know if there are any questions. Again, it was

The Honorable George R. Harvell, Jr.
December 16, 1998
Page 2

good to see you at the meeting, let me know if there is anything I can help you with during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Sanders", written over a horizontal line.

E. Joseph Sanders
General Counsel

EJS/harvell early transfer ltr.doc

Enclosure

cc: Michelle Long
Courtney Pearre
Captain Rondeau
Chad Jenkins

Memorandum

DATE: December 18, 1998

TO: Courtney Pearre, Chief Administrative Officer

FROM: E. Joseph Sanders

RE: The Navy's proposed early transfer of NSA Memphis Airfield Property and Facilities to the City of Millington

Interested parties met on December 12, 1998 to discuss the Navy's proposal to transfer property to Millington before necessary environmental clean up is complete. CERCLA requires that remediation be complete before such a transfer takes place **unless** the Governor agrees to allow the clean up to be deferred. Deferral does not relieve the Federal Government from its obligation to clean up. The covenants made in the deferral request are intended to specifically retain this obligation. The Navy is seeking the deferral of its clean-up obligations for two large tracts of property including the former airfield, proposed to be transferred through a public benefit conveyance (PBC) to the City of Millington for use by the Millington Municipal Airport Authority (the Airfield parcel consisting of approximately 538 acres) and adjoining property proposed to be transferred through an economic development conveyance (EDC) to the City of Millington for use by the Millington industrial development Board (the Non-Airfield parcel consisting of approximately 1,329 acres). Following is the list of attendees and the organizations represented.

U.S. Representative John Tanner's Office: Chad Jenkins and Jim Crow

City of Millington: Mayor George Harvell, Phil Wittenberg and Kevin Reed

Navy: Captain Ann Rondeau, Lt. Bryan Pollard, Lt. Comdr. John Baker, Stephen Beverly, Donald Litton, Raymond Nelson and David Porter

Tennessee Department of Environment and Conservation: Joe Sanders, General Counsel; David Harbin, Jim Morrison, and Steven Stout

Tennessee Office of Attorney General: Deputy Attorney General Barry Turner

Tennessee General Assembly: State Representative Curry Todd

Shelby County: Jim Kelly

Governor Don Sundquist: Legal Counsel to the Governor Michelle Long

- 1) The history of the base realignment at Millington under the federal BRAC law was reviewed, and there was an update on the status of the ongoing investigation into the environmental conditions on the property proposed for transfer. There was a particular emphasis on the plume of groundwater contamination underlying the Airfield parcel and now migrating beneath a portion of the Non-Airfield parcel.
- 2) There was discussion of the State's claim for Natural Resource Damages under CERCLA for the groundwater contamination. The State made it clear that its claim for Natural Resource Damages will continue to be pursued. While the State agreed that it would not deny deferral until this issue is resolved, the State does insist that the deferral agreement specifically reserve the State's right to pursue Natural Resource Damages. The State also made it clear that the deferral agreement must provide assurance that the Navy will cooperate with the State in addressing this issue, including a provision that specifies that the Navy will make a good faith effort to pursue funding for a Natural Resource Damage Assessment.
- 3) The City and County through its political and business representatives expressed their acceptance of the current property lines notwithstanding the lack of guaranteed access to the airport and the industrial property. The City continued to express concern about the limited access and acknowledged the project's marginal feasibility, largely due to that limitation. The City was aware that on-going investigation, and possible future remediation activities, could result in interruption of use of some of the hangar space at the airport and disruption of the airport service. The City indicated that it understood and accepted its obligation to provide access to the Navy following transfer to carry out necessary activities for environmental investigation and clean up.
- 4) The Department of Environment and Conservation will continue to work with the Navy to produce a final draft of the Covenant Deferral Request. This process was targeted to be finished by the middle of January 1999. Mr. Beverly stated that the Navy would then need a month (or perhaps two months if further public notice is necessary) to obtain the signature of the Navy Assistant Secretary before the final CDR can be sent to Governor Sundquist (April being the target date). At that time, Courtney Pearre will recommend that the Governor concur in the request provided that: (I) it is clear that the State's NRD claim is not being waived, (II) there is a "path forward" on resolving the NRD issue, including a good faith commitment to seek funding for a Natural Resource Damage Assessment, (III) and upon the representation by TDEC that concerns raised by the EPA's comments and other details of a technical nature have been adequately resolved.
- 5) Simultaneous to the process for approval for early transfer, the City plans to submit its application for the Economic Development Conveyance and is awaiting FAA action which will allow it to request the public benefit conveyance of the airfield. This should happen within the next several months as well.
- 6) The Navy will also address the environmental matters falling outside the scope of the federal CERCLA statute and matters under CERCLA where remediation is completed in

order to sign a Finding of Suitability for Transfer. Coupled with the Navy's finding of suitability for early transfer and making of the covenant deferral request and the Governor's concurrence and the Navy's overall FOST, the property is expected to be transferred upon approval of the applications made by the City of Millington. The actual conveyance of property is expected to occur next fall or at least prior to the end of 1999.

7) Regardless of the ultimate date of transfer, the Navy will also continue to carry out its obligations related to the further investigation, characterization and clean up of the property. The early transfer has no impact on the Navy's liability under CERCLA, and it maintains its obligation to perform the investigation and clean up of the subject property as required under CERCLA. However, it was pointed out that should the use of the property change, the City will be responsible for any additional remediation that the change would require. For example, if the property is later converted to residential use the City, rather than the Navy, would be responsible for any additional soil remediation that might be necessary for this new use. It was recognized that the obligations to perform necessary activities under CERCLA are paramount to the economic development interests of the City and County.